

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of:

Seaman, et al.

Group Art Unit: 2624

Serial No.: 10/002,706

Examiner: Rosario, Dennis

Filed: October 30, 2001

Docket No. 10008306-1

For: **Systems And Methods For Generating Digital Images Having Image Meta-Data Combined With The Image Data**

REPLY BRIEF RESPONSIVE TO EXAMINER'S ANSWER

Mail Stop: Appeal Brief-Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Sir:

The Examiner's Answer mailed April 15, 2008 has been carefully considered. In response thereto, please consider the following remarks.

AUTHORIZATION TO DEBIT ACCOUNT

It is not believed that extensions of time or fees for net addition of claims are required, beyond those which may otherwise be provided for in documents accompanying this paper. However, in the event that additional extensions of time are necessary to allow consideration of this paper, such extensions are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to deposit account no. 08-2025.

REMARKS

The Examiner has provided in the Examiner's Answer various responses to points made in Applicant's Appeal Brief. Applicant addresses those responses in the following.

A. Rejection Under U.S.C. § 112, First Paragraph

As noted in the Appeal Brief, Applicant did in fact enable the limitation "image meta-data associated with the digital image data created by applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured". In particular, on page 10, line 20 to page 11, line 7 of Applicant's specification, Applicant explicitly described *image analysis algorithms* that analyze image data to identify particular *scene content* and *recognize locations from that scene content*. Given that a location is recognized from analysis of content within the image, it logically follows that Applicant described the algorithm identifying the recognized location "at which the image was captured".

On pages 11 and 12 of the Examiner's Answer, the Examiner argues that the phrase "at which the image was captured" somehow "changes the meaning of the claimed 'recognized location' to include 'an actual physical location on a map' ". In reply, Applicant notes that Applicant never said anything about a "map." Instead, Applicant merely noted that Applicant's original disclosure explicitly describes image analysis algorithms that analyze the image data to "recognize locations". See *Applicant's specification*, page 10, line 20 to page 11, line 7. Clearly then, Applicant both disclosed and enabled recognition of a location as recited in Applicant's claims.

As for the Examiner's statement that an image is "only a collection of digital values that do not represent recognized location information," Applicant notes that it is now common (i.e., in 2008) to recognize various features from such "collections of digital values". For example, it is now common to recognize faces in captured images. Such technology is being used in both law enforcement and in camera focusing algorithms. Therefore, if the Examiner is alleging that it is not possible to recognize features from a mere "collection of digital values" that form an image, the Examiner is mistaken.

Finally, in regard to the Examiner's specious example about an image of "grass" and identifying "Virginia" from the image, Applicant notes that Applicant never stated that the claimed technology can identify every location at which every image is captured. Clearly, a picture of grass alone will render it difficult if not impossible to identify a location. If, however, the image is of say the Eiffel Tower, identification of the location (i.e., Paris) would be much easier.

In summary, Applicant clearly disclosed analysis algorithms that analyze image data recognize locations within the image to enable recognition (identification) of the location at which the image was captured. Clearly, such location identification is possible through such image analysis without the need for "maps" or "GPS" as suggested by the Examiner.

B. Rejections Under 35 U.S.C. §102

As was also noted in the Appeal Brief, the Examiner ignored and provided no patentable weight to the explicit claim limitation “applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured” on the ground that that limitation is allegedly not enabled by Applicant’s disclosure (i.e., the same basis for the rejection under 35 U.S.C. § 112, paragraph 1). As described above, Applicant clearly did enable that limitation. Moreover, it was *per se improper* for the Examiner to provide no patentable weight to the explicit claim limitation on the ground that the limitation was not enabled. As provided in MPEP 2143.03:

II. LIMITATIONS WHICH DO NOT FIND SUPPORT IN THE ORIGINAL SPECIFICATION MUST BE CONSIDERED

When evaluating claims for obviousness under 35 U.S.C. 103, all the limitations of the claims must be considered and given weight, including limitations which do not find support in the specification as originally filed (i.e., new matter). *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983) aff’d mem. 738 F.2d 453 (Fed. Cir. 1984) (Claim to a catalyst expressly excluded the presence of sulfur, halogen, uranium, and a combination of vanadium and phosphorous. Although the negative limitations excluding these elements did not appear in the specification as filed, it was error to disregard these limitations when determining whether the claimed invention would have been obvious in view of the prior art.).

Therefore, the Examiner committed a reversible error by disregarding Applicant’s explicit claim limitations.

In response to Applicant's identification in the Appeal Brief of the fact that the Examiner improperly failed to give patentable weight to Applicant's explicit claim limitation, the Examiner states on page 13 that the Examiner "disagrees." In reply, Applicant reminds the Examiner and notes for the record that the Examiner explicitly stated on page 5 of the final Office Action in regard to Applicant's "image meta-data" limitation that the limitation "is not given patentable weight due to no support in the specification." *Final Office Action*, page 5. Accordingly, the Examiner's disagreement with Applicant's point is dubious.

In addition to denying that he ignored explicit claim limitations, the Examiner indicated in the Examiner's Answer that the Examiner now provides an "explanation" that "clarifies" how Wang does in fact disclose Applicant's "image meta-data" limitation. As an initial matter, Applicant notes that it is unfortunate that the Examiner did not feel compelled to address those explicit claim limitations during normal prosecution, in spite of Applicant's requests during that prosecution for the Examiner to do so. Such practice, is clearly unfair and prejudices Applicant by denying Applicant a full opportunity to respond to the bases on which Applicant's claims are denied issuance before turning to appeal. Furthermore, Applicant has been forced to incur significant delays and monetary expense to obtain a proper review of Applicant's claims and arguments.

Turning to the merits of the Examiner's "clarification" as to how Wang discloses Applicant's claim limitations, the Examiner now alleges that Wang discloses "applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured" because Wang discloses recognizing. Specifically, the Examiner alleges that Wang discloses

identifying a “recognized location at which the image was captured” because a “face is a location on a person’s body”. Such a position is without merit. The Examiner’s interpretation clearly contradicts the plain and ordinary meaning of identifying “a recognized location at which the image was captured”.

Although the Examiner is entitled to a broad interpretation of the claims, that interpretation *must still be reasonable*. Applicant submits that the Examiner’s interpretation is not. Clearly, when one speaks of identifying a “location” at which an image was captured is described, one thinks of the physical location or environment in which the image was captured. One simply would not think that the “location” was a person’s face. Consider a simple example. If someone were to present a picture of a human subject standing on a busy sidewalk with many sky scrapers in the background, and then were to ask that person at which “location” the image was captured, it is highly unlikely that the person would respond “the face!” Instead, anyone familiar with the English language would be inclined to name some city in which they believed the subject was present, i.e., the physical location at which the image was captured. Clearly, the Examiner’s position that a subject’s face constitutes the “location” at which the image was captured exceeds the boundaries of reason.

Applicant further notes that, on page 14 of the Examiner’s Answer, the Examiner admits that Wang does not teach identification of a geographic location. Applicant respectfully submits that the admission is tantamount to an admission that Wang does not in fact disclose “applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was

“captured” as a geographical or physical location (i.e., a place) is inherent in Applicant’s identification of a “location” at which the image was captured.

C. Rejections Under 35 U.S.C. §103

In the Appeal Brief, Applicant noted that the Fuller reference, like the Wang reference, fails to disclose or suggest “image meta-data associated with the digital image data created by applying a predefined image analysis algorithm to the digital image data to identify within the image a recognized location at which the image was captured”.

On page 17 of the Examiner’s Answer, the Examiner now argues that Fuller discloses that limitation. In particular, the Examiner alleges that Fuller discloses that limitation given that the Fuller apparatus identifies faces. Applicant reiterates that the Examiner’s equating of face recognition to recognizing a location at which an image was captured is both unwarranted and contrary to the plain and ordinary meaning of identifying a “location” at which an image is captured. Therefore, the Examiner’s arguments as to Fuller’s disclosure are flawed for at least the same reasons as those directed to Wang’s disclosure.

CONCLUSION

In summary, it is Applicant's position that Applicant's claims are patentable over the applied prior art references and that the rejection of these claims should be withdrawn. Appellant therefore respectfully requests that the Board of Appeals overturn the Examiner's rejection and allow Applicant's pending claims.

Respectfully submitted,



David R. Risley
Registration No. 39,345